

1
2
3
4
5
6
7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**
9

10 FRANCISCO ISLAS,

11 Plaintiff,

12 v.

13 US BANK TRUST NATIONAL
14 ASSOCIATION,

15 Defendant.
16

Case No. 2:13-cv-00379-LDG (PAL)

ORDER

17 The plaintiff, Francisco Islas, has filed a complaint alleging the misrepresentation of
18 the “ownership and proper assignments” of a Deed of Trust he (and an unknown person)
19 signed. The defendant, US Bank Trust National Association (US Bank) moves to dismiss
20 for failure to state a claim (#6), and further move to expunge (#7) an “Affidavit of Fact” that
21 Islas had recorded against the underlying property. Islas has filed an opposition (#9) to the
22 motion to dismiss.

23 **Motion to Dismiss**

24 The defendant’s motion to dismiss, brought pursuant to Fed. R. Civ. P. 12(b)(6),
25 challenges whether the plaintiff’s complaint states “a claim upon which relief can be
26 granted.” In ruling upon this motion, the court is governed by the relaxed requirement of

1 Rule 8(a)(2) that the complaint need contain only “a short and plain statement of the claim
2 showing that the pleader is entitled to relief.” As summarized by the Supreme Court, a
3 plaintiff must allege sufficient factual matter, accepted as true, “to state a claim to relief that
4 is plausible on its face.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007).
5 Nevertheless, while a complaint “does not need detailed factual allegations, a plaintiff’s
6 obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels
7 and conclusions, and a formulaic recitation of the elements of a cause of action will not do.”
8 *Id.*, at 555 (citations omitted). In deciding whether the factual allegations state a claim, the
9 court accepts those allegations as true, as “Rule 12(b)(6) does not countenance . . .
10 dismissals based on a judge’s disbelief of a complaint’s factual allegations.” *Neitzke v.*
11 *Williams*, 490 U.S. 319, 327 (1989). Further, the court “construe[s] the pleadings in the
12 light most favorable to the nonmoving party.” *Outdoor Media Group, Inc. v. City of*
13 *Beaumont*, 506 F.3d 895, 900 (9th Cir. 2007).

14 However, bare, conclusory allegations, including legal allegations couched as
15 factual, are not entitled to be assumed to be true. *Twombly*, 550 U.S. at 555. “[T]he tenet
16 that a court must accept as true all of the allegations contained in a complaint is
17 inapplicable to legal conclusions.” *Ashcroft v. Iqbal* 556 U.S. ___, 129 S.Ct. 1937, 1949
18 (2009). “While legal conclusions can provide the framework of a complaint, they must be
19 supported by factual allegations.” *Id.*, at 1950. Thus, this court considers the conclusory
20 statements in a complaint pursuant to their factual context.

21 To be plausible on its face, a claim must be more than merely possible or
22 conceivable. “[W]here the well-pleaded facts do not permit the court to infer more than the
23 mere possibility of misconduct, the complaint has alleged—but it has not ‘show[n]’—that the
24 pleader is entitled to relief.” *Id.*, (citing Fed. R. Civ. Proc. 8(a)(2)). Rather, the factual
25 allegations must push the claim “across the line from conceivable to plausible.” *Twombly*.

1 550 U.S. at 570. Thus, allegations that are consistent with a claim, but that are more likely
2 explained by lawful behavior, do not plausibly establish a claim. *Id.*, at 567.

3 At the time Islas filed his complaint, he was acting *pro se*. Although allegations of a
4 *pro se* complaint are held to less stringent standards than formal pleadings drafted by
5 lawyers, *Haines v. Kerner*, 404 U.S. 519 (1972), sweeping conclusory allegations do not
6 suffice, *Leer v. Murphy*, 844 F.2d 628, 634 (9th Cir. 1988).

7 US Bank's motion, to which it has attached documents concerning the Deed of
8 Trust, points out several distinct flaws in the complaint, each of which must be corrected
9 before this matter may proceed. First, as suggested in the complaint and confirmed in the
10 documents submitted by US Bank, Islas is not the only individual to sign the deed of trust.
11 Rather, a Carmen Islas also signed the Deed of Trust, which secured a loan that they
12 obtained from CitiMortgage Inc. Thus, it would appear that Carmen Islas is an
13 indispensable party to this litigation.

14 Second, as charitably stated by US Bank, the complaint is hardly a model of clarity.
15 US Bank has gleaned from the complaint that it appears Islas is attempting to bring a claim
16 for misrepresentation. It also appears that Islas is requesting injunctive and declaratory
17 relief. US Bank suggests in its motion that the chain of title is accurately reflected in the
18 documents of public record. Further, US Bank argues, accurately, that Islas has not pled
19 any allegations of fact in support of any of the elements of a prima claim for
20 misrepresentation. Finally, US Bank also correctly argues that Islas has failed to allege his
21 claim of misrepresentation with the requisite specificity required as to time, place, content
22 and the parties involved in the alleged misrepresentation.

23 In opposition, Islas merely provides a blanket argument that Rule 8(a) merely
24 requires a sort and plain statement showing that he is entitled to relief. While Islas is
25 correct as to the requirements of Rule 8(a), he has not shown or made any argument
26 indicating how his complaint meets this standard (other than generally asserting that he

1 has complied). While a plaintiff need only articulate a short and plain statement showing
2 entitlement to relief, such short and plain statement must allege facts, and those facts must
3 plausibly support the claim for which relief is sought. See, *Twombly*, 550 U.S. at 570. Islas
4 has not alleged such facts. Further, Rule 8(a) is not the only rule governing a claim for
5 misrepresentation. Rather, Rule 9(b) requires that Islas plead his claim for
6 misrepresentation "with particularity" as to the circumstances. Generally, such particularity
7 requires allegations as to the time, place, content, and parties to an alleged
8 misrepresentation.

9 As the defendant filed this action *pro se*, the Court will grant the motion but without
10 prejudice to permit Islas to correct the deficiencies of his complaint. Therefore, THE
11 COURT **ORDERS** that Defendant's Motion to Dismiss (#6) is GRANTED as follows: The
12 complaint is DISMISSED without prejudice.

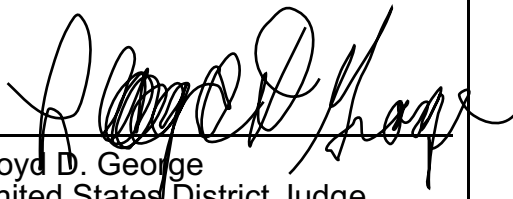
13 THE COURT FURTHER **ORDERS** that the plaintiff shall have fifteen days to file an
14 amended complaint.

15 THE COURT FURTHER **ORDERS** that Defendant's Motion to Expunge Fugitive
16 "Affidavit of Fact" from the County Records (#7) is GRANTED.

17 THE COURT FURTHER **ORDERS** the "Affidavit of Fact" recorded by the plaintiff
18 regarding the property located at 4725 South Pearl Street, Las Vegas, NV 89121, is
19 **CANCELLED** and **EXPUNGED**.

20 THE COURT FURTHER **ORDERS** that a copy of this Order may be recorded by the
21 Clark County Recorder in the applicable chain of title.

22
23 DATED this 26 day of March, 2014.

24
25 
26 Lloyd D. George
United States District Judge